



Reprinted  
January 28, 2014

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## HOUSE BILL No. 1241

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DIGEST OF HB 1241 (Updated January 27, 2014 4:45 pm - DI 97)

**Citations Affected:** IC 27-7.

**Synopsis:** Environmental coverage. Specifies the manner in which the meaning of "pollutant", as used in certain liability insurance policies, must be construed.

**Effective:** July 1, 2014.

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### Carbaugh, Lehman

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January 14, 2014, read first time and referred to Committee on Insurance.  
January 16, 2014, amended, reported — Do Pass.  
January 27, 2014, read second time, amended, ordered engrossed.

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HB 1241—LS 7007/DI 97





Reprinted  
January 28, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1241

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A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 27-7-14 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2014]:

4       **Chapter 14. Pollutant Coverage Exclusions**

5       **Sec. 1. This chapter applies to a claim made under a liability**  
6       **insurance policy that is issued or renewed after June 30, 2014.**

7       **Sec. 2. When used in a liability insurance policy that does either**  
8       **of the following, the term "pollutant" must be construed to have**  
9       **the meaning set forth in section 3(a) of this chapter:**

10       **(1) The liability insurance policy does not define the term**  
11       **"pollutant".**

12       **(2) The liability insurance policy defines the following terms**  
13       **as follows:**

14       **(A) "Pollutant" to include any solid, liquid, gaseous, or**  
15       **thermal irritant or contaminant, including smoke, vapor,**  
16       **soot, fumes, acids, alkalis, chemicals, and waste.**

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(B) "Waste" to include materials to be recycled, reconditioned, or reclaimed.

Sec. 3. (a) As used in a liability insurance policy described in section 2 of this chapter, the following apply:

(1) "Pollutant" means any solid, liquid, gaseous, or thermal irritant or contaminant, including:

(A) smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste;

(B) agents or substances that are recognized in industry or government to be harmful or toxic to an individual or to property; and

(C) agents or substances that are regulated under or listed in any of the following:

(i) The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Priority List of Hazardous Substances (1997 and all subsequent editions).

(ii) The Resource Conservation and Recovery Act (RCRA), including all categories of hazardous waste and all hazardous constituents.

(iii) The Agency for Toxic Substances And Disease Registry ToxFAQs.

(iv) The United States Environmental Protection Agency EMCI Chemical References Complete Index.

(v) The United States Occupational Safety and Health Administration List of Hazardous Chemicals.

(vi) All successive editions, updates, and successors of items (i) through (v) and similar state and federal statutes, regulations, and indices concerning potentially harmful agents.

(2) "Waste" includes materials to be recycled, reconditioned, or reclaimed.

(b) The definitions specified in subsection (a) shall be presumed to be clear and sufficient notice to an insured of the substances for which coverage is excluded under the liability insurance policy.

Sec. 4. An irritant or a contaminant referred to in section 3(a) of this chapter constitutes a pollutant without regard to the:

(1) physical form;

(2) presence, alone or in combination with another agent or substance; or

(3) use in the insured's general business activities; of the agent or substance.



1       **Sec. 5. This chapter does not preclude an insurer from defining**  
2       **"pollutant" in a manner different from the manner specified in**  
3       **section 2 of this chapter, subject to any required approval by the**  
4       **department of insurance.**

5       **Sec. 6. (a) This section does not apply to an insurer that defines**  
6       **"pollutant" in a manner different from the manner specified in**  
7       **section 2 of this chapter.**

8       **(b) An insurer that defines "pollutant" as specified in section 2**  
9       **of this chapter and excludes or restricts coverage for pollutant**  
10       **related claims under a liability insurance policy shall, when the**  
11       **policy is issued or renewed, provide to the named insured written**  
12       **notice of the applicability of this chapter.**

13       **(c) If an insurer fails to provide notice as required by subsection**  
14       **(b), the following apply:**

15               **(1) The insurer may be subject to administrative action by the**  
16               **department of insurance for a violation of subsection (b).**

17               **(2) The terms, conditions, or coverage under the liability**  
18               **insurance policy to which the notice applies are not affected**  
19               **by the failure.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1241, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 11, delete "irritant or contaminant," and insert "**agent or substance,**".

Page 2, line 4, delete "irritant or contaminant," and insert "**agent or substance,**".

Page 2, line 35, delete "irritant or a contaminant" and insert "**agent or a substance**".

Page 2, line 38, delete "irritant" and insert "**agent**".

Page 2, line 39, delete "contaminant;" and insert "**substance;**".

Page 2, line 41, delete "irritant or contaminant." and insert "**agent or substance.**".

and when so amended that said bill do pass.

(Reference is to HB 1241 as introduced.)

LEHMAN, Chair

Committee Vote: yeas 8, nays 4.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1241 be amended to read as follows:

Page 1, line 6, after "policy" insert "**that is issued or renewed**".

Page 1, delete lines 7 through 16, begin a new paragraph and insert:

**"Sec. 2. When used in a liability insurance policy that does either of the following, the term "pollutant" must be construed to have the meaning set forth in section 3(a) of this chapter:**

**(1) The liability insurance policy does not define the term "pollutant".**

**(2) The liability insurance policy defines the following terms as follows:**

**(A) "Pollutant" to include any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.**

**(B) "Waste" to include materials to be recycled, reconditioned, or reclaimed."**



Page 2, line 4, delete "agent or substance," and insert **"irritant or contaminant,"**.

Page 2, line 29, delete "a material that is" and insert **"materials"**.

Page 2, line 31, delete ":".

Page 2, line 32, delete "(1)".

Page 2, line 33, after "insured" insert **"of the substances for which coverage is excluded"**.

Page 2, line 33, delete "; and" and insert ".".

Page 2, run in lines 31 through 33.

Page 2, delete line 34.

Page 2, line 35, delete "agent or a substance" and insert **"irritant or a contaminant"**.

Page 2, line 35, delete "3" and insert **"3(a)"**.

Page 3, line 2, delete "3" and insert **"2"**.

Page 3, after line 3, begin a new paragraph and insert:

**"Sec. 6. (a) This section does not apply to an insurer that defines "pollutant" in a manner different from the manner specified in section 2 of this chapter.**

**(b) An insurer that defines "pollutant" as specified in section 2 of this chapter and excludes or restricts coverage for pollutant related claims under a liability insurance policy shall, when the policy is issued or renewed, provide to the named insured written notice of the applicability of this chapter.**

**(c) If an insurer fails to provide notice as required by subsection (b), the following apply:**

**(1) The insurer may be subject to administrative action by the department of insurance for a violation of subsection (b).**

**(2) The terms, conditions, or coverage under the liability insurance policy to which the notice applies are not affected by the failure."**

(Reference is to HB 1241 as printed January 17, 2014.)

CARBAUGH

